IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE A.K.BASHEER

MONDAY, THE 30TH JULY 2007 / 8TH SRAVANA 1929

OP.No. 36128 of 2000(A)

PETITIONER:

VIVEK MURUVASSERY,
S/O. VIJAYAN, AGED 24 YRS.
MOKERI P.O.
KOZHIKODE DIST.

BY ADV. SRI.P.M.SAJI

RESPONDENTS:

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1. THE STATE OF KERALA, REP. BY THE SECRETARY
   DEPT. OF EDUCATION, SECRETARIAT, THIRUVANANTHAPURAM

2. THE DISTRICT EDUCATIONAL OFFICER,
   VADAKARA P.O., VADAKARA
   KOZHIKODE DIST.

3. THE MANAGER AND CORRESPONDENT
   VATTOLI NATIONAL HIGH SCHOOL,
   P.O. VATTOLI, VIA KAKKATTIL
   KOZHIKODE DIST.

4. THE PRINCIPAL
   VATTOLI NATIONAL HIGH SCHOOL,
   P.O. VATTOLI, VIA KAKKATTIL
   KOZHIKODE DIST.

5. K.LEKHA, PAVITHRALAYAM
   EDACHERRY P.O., KOZHIKODE DIST.

*R6. JIJU R. DEVIKA SADAN
P.O. VATTOLI, KAKKATTIL (VIA.) KOZHIKODE DIST.

ADDL. RESPONDENT NO.6 IS IMPLEADED AS PER ORDER DT. 27.6.07 IN I.A. 8310/07

BY ADV. SRI.R.PARTHASARATHY
SMT.P.VANI
SRI.P.SHRIHARI
GOVERNMENT PLEADER SRI. A.J. VARGHESE
SRI.R.K.MURALEEDHARAN

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 30/07/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

OP NO 36128/00

ORDER IN C.M.P. No. NO.61568/00 IN O.P. NO.36128/00

DISMISSED

30.7.07 SD/- A.K. BASHEER, JUDGE

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1. COPY OF THE CERTIFICATE OBTAINED BY THE PETITIONER FOR HAVING PASSED THE “RASHTRABHASHA VISHARAD OF DAKSHINA BHARAT HINDI PRACHAR DT. 30.6.98

EXT.P2. COPY OF THE RELEVANT PORTION OF THE SERVICE BOOK OF PETITIONER'S FATHER

EXT.P3. COPY OF THE CERTIFICATE OF LEGAL REPRESENTATIVE OF THE DECEASED ABOVE SAID VIJAYAN ISSUED BY THE TAHSILDAR, VADAKARA

EXT.P4. COPY OF THE PETITION SUBMITTED BY THE PETITIONER TO THE 3RD RESPONDENT DT. 19.9.99

EXT.P5. COPY OF THE PETITION SUBMITTED BY THE PETITIONER TO THE 3RD RESPONDENT DT. 25.9.99

EXT.P6. COPY OF THE PETITION SUBMITTED BY THE PETITIONER TO THE 2ND RESPONDENT

EXT.P7. COPY OF THE ACKNOWLEDGMENT CARD

EXT.P8. COPY OF THE ACKNOWLEDGMENT CARD

EXT.P9. COPY OF THE ACKNOWLEDGMENT CARD

EXT.P10. COPY OF THE JUDGMENT IN OP NO.27198/99 DT. 28.7.00

EXT.P11. COPY OF THE ORDER NO.B2-13394/1999 DT. 30.9.00

EXT.P12. COPY OF THE REPRESENTATION SUBMITTED BY THE PETITIONER BEFORE THE DISTRCT EDUCATIONAL OFFICER DT. 18.7.96

EXT.P13. COPY OF THE REPLY BY THE 2ND RESPONDENT TO THE PETITIONER DT. 30.9.96

EXT.P14. COPY OF THE APPLICATION SUBMITTED BY THE PETITIONER DT. 13.12.00

RESPONDENT'S EXHIBITS:

EXT.R3(a). COPY OF THE LETTER DT. 17.10.01

EXT.R3(b). COPY OF THE REPLY DT. 1.11.01

EXT.R3(c). COPY OF THE ORDER DT. 14.1.02

EXT.R5. COPY OF THE ORDER NO.EM5/90959/01/DPI/K.DIS THE ORDER OF DPI DT. 14.1.02

EXT.R5(1). COPY OF THE ORDER OF R3 DT. 17.1.01

EXT.R5(2). COPY OF THE PETITIONER'S LETTER DT.1.11.01

EXT.R5(3). COPY OF G.O.(Rt.) NO.3190/2002/GL. EDN. DT. 17.9.02

EXT.R5(4). COPY OF ORDER NO. K.Dis. B2-13058/02 ORDER OF R2 DT.2.1.03.

/TRUE COPY/

PA TO JUDGE.

A.K. BASHEER, J.

O.P. NO. 36128 OF 2000

Dated this the 30th day of July, 2007

J U D G M E N T

Petitioner claimed the benefit of Rule 51B of Chapter XIV A KER and sought appointment in the school under the management of respondent No.3 as a Language teacher (Hindi) consequent on the death of his father, who was working as an Upper Primary School Assistant.

2. It is not in dispute that petitioner's father died in harness on November 24, 1991. At the time of his father's death, petitioner was aged only 15 years. His Date of Birth is May 21, 1976. It is admitted by the petitioner that he acquired the requisite qualifications to hold the post of language teacher in the year 1996 only and applied for compassionate appointment in the same year. According to the petitioner a vacancy of a language teacher (Hindi) arose in the school in the year 1999. The manager did not accede to the request of the petitioner to appoint him against the said vacancy, but instead appointed respondent No.5.

3. The matter was taken up before the District Educational

Officer who passed Ext.P11 order on September 30, 2000. The DEO found that petitioner had not submitted his application in the prescribed format. Therefore the officer directed the petitioner to submit a fresh application with all the relevant documents and forward a copy to him within one month from the date of receipt of the order. The manager was directed to appoint the petitioner in the next suitable, which may arise in the school. However, as regards petitioner's claim for the post of language teacher (Hindi), which had arisen in the school in October 1999, the officer took the view that respondent No.5 was entitled to get her appointment in that post approved.

4. Petitioner had challenged the above finding of the DEO before the Director of Public Instruction as well as the Government. Both the authorities concurred with the view taken by the DEO. In other words, the authorities found that respondent No.5 was entitled to get approval for her appointment as language teacher (Hindi) in the vacancy that had arisen in the school on October 1999.

5. It is the admitted position that the petitioner had not submitted a proper application as directed by the DEO in Ext.P11 order within the stipulated period. On the contrary, he submitted his

application only in the year 2000. It is also on record that petitioner had given an undertaking before the DEO that he was prepared to accept either the post of a clerk or an attender, if such a post was offered to him by the management. Petitioner concedes that the post of full-time menial was offered to him by the manager. Ext.R3(a) is the communication sent by the manager in this regard. But the petitioner declined the offer. According to the petitioner, even at the time when he was offered the post of full time menial, vacancy of a clerk and that of a lab assistant were available in the school and it was therefore that he declined to accept the post of Full Time menial.

6. Having heard learned counsel for the parties and having perused the records, I do not find any illegality or irregularity in the orders passed by the departmental officers. As noticed already, petitioner had submitted a proper application only in the year 2000. At the time when the post of language teacher arose in the school in 1999, there was no proper application by the petitioner for the post. Such a finding was entered by the DEO, which was confirmed in appeal and revision by the Director and the Government respectively. Those findings were entered on the basis of the materials available on record.

7. In that view of the matter, I do not find any reason to disturb the said finding entered by the statutory authorities on the basis of the factual situation then available. The only question that remains is whether the petitioner was entitled to insist that he should have been given the post of a clerk or a lab attender in the school. Petitioner has not produced any materials to show that either the post of a clerk or that of a lab attender had arisen in the school after 2000. In that view of the matter also, I am not satisfied that the petitioner is entitled to get any relief.

The writ petition fails and it is accordingly dismissed.

A.K. BASHEER, JUDGE

vps

A.K. BASHEER, JUDGE

OP NO.36128/00

JUDGMENT

3OTH JULY, 2007